THE

WEEKLY ENTERTAINER.

For MONDAY, November 3, 1806.

On the RIGHT *of* KILLING GAME.

[From Mr. Wilkes's Encyclopædia Londinenfis, Vol. VIII.]

(Concluded from Page 851.*)*

THUS far we have stated the authority of Sir William Blackstone. But E. Christian, esq. professor of the laws of England, in the university of Cambridge, in his "Notes on the Commentaries," has with great judgment and candour pointed out the insufficiency of several parts of that authority. He observes, that "the learned judge has frequently, and even zealously, inculcated the position, that the common law has vested the sole property of all the game of England in the king alone; and of consequence that no man, let his rank and fortune be what they may, is qualified to kill game, or is exempt from the original penalties, unless he possesses some peculiar privilege derived from the king. This doctrine, enforced by so celebrated an author, apparently the result of mature deliberation, and which has been so long acquiesced in, he (Mr. Christian) would have questioned with diffidence, if he had not been fully persuaded that it was unsupported by any prior authority, and that the authorities to the contrary were numerous and irresistible.

"The learned judge himself admits, that this is a novel doctrine to such as call themselves qualified sportsmen; yet he has referred to no preceding authority whatever, in any part of the Commentaries; but in p. 415, vol. ii. he has deduced this doctrine from two general principles, viz. that the king is the ultimate proprietor of all the lands in the kingdom, and therefore

he has the right of the universal soil to enter thereon, and to chase and take such creatures at his pleasure. From the king's right to the universal soil, it is not evident why he should have a better right to take such creatures, than to take any other production of that soil. And even, if the king's majesty should have a right to enter all the lands of the kingdom in pursuit of game, this affords no inference that the land-owner may not enjoy this right concurrently with the king. But although no complaint can perhaps be made against the king for entering the lands of his subjects, it has been determined that this power cannot be given to his foresters and servants.

" The other general principle relied upon by the learned commentator is, another maxim of the common law, which he says he has frequently cited and illustrated, that these animals are *bona vacantia*, and having no other owner, belong to the king, by his prerogative. Ir has been determined, that fish, if not confined as in a trunk, cannot be called *bona et catalla*; and so game, 'till it is taken, is every where said to be *nullius in bonis*. But I am inclined to think that the very reverse of the maxim is true, and that *bona vacantia* belongs to the first occupant or finder, except in those instances particularly specified by the law, and in which they are expressly given to the king. A person might have acquired by occupancy, even in the seventeeth century, an estate in real property. If a pearl should be found in an oyster, no lawyer would say, that it was the property of the king. If all wild animals had belonged to the crown, it would have been superfluous to have specified whales, sturgeons, and swans. Lord Coke tells us, that ' a swan is a royal fowl; and all those the property whereof is not known, do belong to the king by his prerogative: and so whales and sturgeons are royal fish, and belong to the king by his prerogative.' Case of swans, 7 Co. 16. And the king may grant wild swans unmarked, ib. 18. But these are the only animals which our law has conferred this honour upon.

" It is true that our kings, prior to the *carta de foresta*, claimed and exercised the prerogative of making forests wherever they pleased over the grounds of their subjects: within the limits of these forests certain wild animals were preserved, by severe laws, for the recreation of the sovereign. A district thus bounded at the king's pleasure, might have been granted by the king to any of his subjects, who enjoyed the exclusive privilege, either of a forest, chase, park, or free warren, according to the extent of the jurisdiction and powers conferred by the royal grant; but beyond the boundaries of these privileged places neither the king, nor any of his grantees, claimed a property in the game: for, according to the law of King Canute, *quilibet homo dignus venatione sua in sylva, et in agris sibi propriis, et in dominio suo*; which law Manwood declares was confirmed

confirmed by many succeeding kings. Tit. For. pl. 3. If this were so, it cannot be correct what the learned commentator has advanced, that upon the Norman conquest a new doctrine took place. By the *carta de foresta* all the new-made forests were disafforested and thrown open again; but besides the creation of new forests by the Norman kings, they had also made great additions and encroachments to the ancient Saxon forests; these encroachments were called purlieus; and the owner of a purlieu might hunt and kill game within the limits of a purlieu, as any other man might have done in his own grounds: and the authorities of Lord Coke and Manwood concur, if deer come out of the forest into the purlieu, the purlieu-man may hunt and kill them, provided he does it fairly and without forestalling. And this distinction is made; if a stag can recover the *filum forestæ*, the border of the forest, before the purlieu-man's dogs fasten upon him, he then belongs to the king, or to the owner of the forest, and the purlieu-man must call his dogs back; but if they fasten upon him before he gains the forest, and he drags them into it, he belongs to the owner of the purlieu, who may enter the forest and carry him away. 4 Inst. 303. Manw. Purlieu. This alone is decisive against the maxim laid down by the learned commentator; but there are various authorities to the same effect. In the year-book 12 Hen. VIII. fo. 10. it is held, if a man drive a stag out of a forest and kill him, he shall gain no property in him, because he shall derive no advantage from his own wrongful act; yet if the stag comes of himself beyong the limits of the forest, then any one (if qualified) may kill and take him, for they are animals *feræ naturæ, et nullius in bonis;* and the maxim is *capiat qui capere potest*, i. e. catch that catch can.

" That the king has no property in deer or other game, when they are out of a forest, was determined also in a case reported by Keilway, 30, and copied by Manwood, 202. In that case an action of trespass was brought for entering the plaintiff's close; the defendant pleaded, that the place in which the trespass was supposed to be committed was adjoining to the king's forest, and that the plaintiff was bound to impale the said forest, and that for want of paling, four deer escaped out of the forest into the plaintiff's land, and that he the defendant entered by the command of the forester to drive them back to the forest. The court held that this plea was not good; ' for though the plaintiff was in fault for not paling, yet it was not lawful for the forester, or any person, to drive the deer out of the ground, or to take them; and the reason was, because the king had no property in them; and this was different from the case of tame cattle, where the property still remains in the owner though they are out of his ground, for which reason he may retake them wherever he finds them; but it is not so when the beasts are wild.'

" The learned judge frequently intimates that no person is exempt from the original penalties; but I am inclined to think that no authority whatever can be found that any penalties were ever inflicted for killing game out of privileged grounds, except those which have been introduced by modern game laws, or the qualification acts. Lord Coke reports that the court held in the case of monopolies, 11 Co. 87, that 'it is true that none can make a park, chase, or warren, without the king's licence, for that is *quodam modo* to appropriate those creatures, which are *feræ naturæ et nullius in bonis*, to himself, and to restrain them of their natural liberty, which he cannot do without the king's licence; but for hunting, hawking, &c. which are matters of pastime, pleasure, and recreation, there needs no licence, but every one may in his own land use them at his pleasure without any restraint to be made unless by parliament, as appears by the statutes of 11 Hen. VII. c. 17. 23 Eliz. c. 10. and 3 Jac. I. c. 13.' These authorities are also recognised and confirmed in Bro. Abr. tit. Propertie, and in Hales's Commentary to F. N. B. 197. And the following may serve as a specimen of the authorities collected by Brooke: *quant beastes savages le roye aler hors del forrest, le property est hors del roy*; and again, *silz sount hors del parke, capient conceditur.*"

To these remarks we might add, that the learned commentator appears to have overlooked entirely the rights of allodial estates in England, and to have confined his observations chiefly to the feodal tenure established by the conqueror, and to the right of the king as lord paramount of the fee. But over allodial property, and the ancient ecclesiastical tenures, where there is no fee, this claim could not exist; and therefore, upon those lands, no superior lord, or owner of free warren, or purlieu, have claimed to exercise the right of pursuing or killing the game; nor can it be done without incurring the penalties of the law in an action of trespass. Allodial estates are those pure freeholds which, during the feodal government, were holden by the possessors, without being subjected to military service, fine, or fee; and, according to Dr. Stuart, in his " View of Society," 4to. edit. p. 211, " allodial proprietors, to avoid military service or fee, devised the fraud of assigning their lands to the church, and of holding them under its exemptions and immunities. Those who held possessions purely allodial, could only be called out in foreign wars; and as they held of no superior, or lord of a manor, so they had no part in the feodal associations, were subject to no homage, nor liable to any suit or service at the manerial courts." Over such land, therefore, no person can claim to pursue the game, but by licence of the owner.

By the yearly mutiny act, if any officer or soldier shall, without leave of the lord of the manor, under his hand and seal,

destroy

destroy any hare, coney, pheasant, partridge, pigeon, or other fowl, poultry, or fish, or his majesty's game, and be convicted thereof, on oath of one witness, before one justice: every officer so offending shall forfeit 5l. to the poor; and the commanding officer upon the place, for every offence committed by any soldier under his command, shall forfeit 20s. in like manner. And if, upon conviction by the justices, the demand thereof made by the constable or overseers of the poor, he shall not in two days pay the said penalties, he shall forfeit his commission.

This clause, though enacted by the legislature for the best of purposes, that of preventihg officers in the army from being estranged from their duty by the sports of the field; yet, in its operation, it is liable to bear extremely hard upon a most meritorious class of men, embarked under every peril of their lives for the defence and glory of their country. Had this prohibition been tempered with some such words as while on duty, or, on a march, or, under orders for embarkation, or, during the alarm for invasion, &c. no hardship or particular severity could be complained of. But as the law now stands, officers in the army, while in cantonments, in barracks, in winter quarters, or even on leave of absence at their own homes, and on their own estates, be their qualifications in rank or fortune whatever they may, appear, by the mutiny act, to be restrained from shooting, hunting, coursing, or killing game, in any kind of way whatsoever, without being amenable to informers and forfeitures. This will also appear the more unreasonable, when it is recollected that officers in the navy are not restricted from these recreations, either by the articles of war, or any other code by which the nautical discipline is regulated.

[*Of Trespass in pursuing Game—in our next.*]

NICOLAS PEDROSA.

(Concluded from Page 8;6.)

AS soon as the frigate and her prize cast anchor in the Tagus, Don Manuel de Casafonda impatiently reminded our captain of his promised parole. The painful moment was now come, when an explanation of some sort became unavoidable: the generous Englishman, with a countenance expressive of the tenderest pity, took the Spaniard's hand in his, and seating him on a couch beside him, ordered the centinel to keep the cabin private, and delivered himself as follows—

"Senor Don Manuel, I must now impart to you an anxiety which I labour under on your account; I have strong reason to suspect you have enemies in your own country, who are upon the

the watch to arrest you on your landing; when I have told you this, I expect you will repose such trust in my honour and the sincerity of my regard for you, as not to demand a further explanation of the particulars on which my intelligence is founded."—"Heaven and earth!" cried the astonished Spaniard, "who can be those enemies I have to fear, and what can I have done to deserve them?"—"So far I will open myself to you," answered the captain, as to point out the principal to you, the inquisidor-general." "The best friend I have in Spain," exclaimed the governor, "my sworn protector, the patron of my fortune: he my enemy! impossible." "Well, Sir," replied the captain, "if my advice do not meet belief, I must so far exert my authority for your sake, as to make this ship your prison, 'till I have waited on our minister at Lisbon, and made the enquiries necessary for your safety; suspend your judgment on the seeming harshness of this measure 'till I return to you again;" and at the same time rising from his seat, he gave orders for the barge, and leaving strict injunctions with the first lieutenant not to allow of the governor's quitting the frigate, he put off for the shore, and left the melancholy Spaniard buried in profound and silent meditation.

The emissaries of the inquisition having at last traced Pedrosa to Lisbon, and there gained intelligence of his having entered on board the frigate, our captain had no sooner turned into the porch of the hotel at Buenos-Ayres, than he was accosted by a messenger of state, with a requisition from the prime minister's office, for the surrender of one Nicolas Pedrosa, a subject of Spain, and a criminal, who had escaped out of the prison of the inquisition in Madrid, where he stood charged of high crimes and misdemeanors.

As soon as this requisition was explained to our worthy captain, without condescending to a word in reply, he called for pen and ink, and writing a short order to the officer commanding on board, instantly dispatched the midshipman, who attended him, to the barge, with directions to make the best of his way back to the frigate, and deliver it to the lieutenant: then turning to the messenger, he said to him in a resolute tone —"That Spaniard is now borne on my books, and before you shall take him out of the service of my king, you must sink his ship." Not waiting for a reply he immediately proceeded, without stop, to the house of the British minister, at the further end of the city: here he found Pedrosa's intelligence, with regard to the governor of Quito, expressly verified, for the order had come down even to Lisbon on the chance of the Spanish frigate's taking shelter in that port: to this minister he related the horrid tale which Pedrosa had delivered to him, and with his concurrence it was determined to forward letters into Spain, which Don Manuel should be advised to write to his lady

lady and friends at Madrid, and to wait their answer before any further discoveries were imparted to him respecting the blacker circumstances of the case: in the mean time it was resolved to keep the prisoner safe in his asylum.

The generous captain lost no time in returning to his frigate, where he immediately imparted to Don Manuel the intelligence he had obtained at the British minister's. "This, indeed," cried the afflicted Spaniard, "is a stroke I was in no respect prepared for; I had fondly persuaded myself there was not in the whole empire of Spain a more friendly heart than that of the inquisidor's; to my beloved Leonora he had ever shewn the tenderness of a paternal affection from her very childhood; by him our hands were joined; his lips pronounced the nuptial benediction, and through his favour I was promoted to my government: grant Heaven, no misfortune hath befallen my Leonora! surely she cannot have offended him and forfeited his favour." "As I know him not," replied the captain, "I can form no judgment of his motives; but this I know, that if a man's heart be capable of cruelty, the fittest school to learn it in must be the inquisition." The proposal was now suggested of sending letters into Spain, and the governor retired to his desk for the purpose of writing them; in the afternoon of the same day the minister paid a visit to the captain, and receiving a packet from the hands of Don Manuel, promised to get it forwarded by a safe conveyance according to direction.

In due course of time this fatal letter from Leonora opened all the horrible transaction to the wretched husband:—

"The guilty hand of an expiring wife, under the agonizing operation of a mortal poison, traces these few trembling lines to an injured wretched husband. If thou hast any pity for my parting spirit, fly the ruin which awaits thee, and avoid this scene of villainy and horror. When I tell thee I have borne a child to the monster, whose poison runs in my veins, thou wilt abhor thy faithless Leonora; had I strength to relate to thee the subtile machinations, which betrayed me to disgrace, thou wouldst pity, and, perhaps, forgive me. Oh agony! can I write his name?—the inquisidor is my murderer.—My pen falls from my hand.—Farewell for ever!"

Had a shot passed through the heart of Don Manuel, it could not more effectually have stopt it's motions than the perusal of this fatal writing: he dropped lifeless on the couch, and but for the care and assistance of the captain and Pedrosa, in that posture he had probably expired. Grief like his will not be described by words, for to words it gave no utterance; 'twas suffocating, silent woe.

Let us drop the curtain over this melancholy pause in our narration, and attend on the mournful widower now landing upon English ground, and conveyed by his humane and gene-

rous preserver, to the house of a noble earl, the father of our amiable captain, and a man by his virtues still more conspicuous than by his rank. Here amidst the gentle solicitudes of a benevolent family, in one of the most enchanting spots on earth, in a climate most salubrious and restorative to a constitution exhausted by heat, and a heart nearly broken with sorrow, the reviving spirits of the unfortunate Don Manuel gave the first symptoms of a possible recovery.

At the period of a few tranquillizing weeks here passed in the bosom of humanity, letters came to hand from the British minister at Lisbon, in answer to a memorial, which I should have stated to have been drawn up by the friendly captain before his departure from that port, with a detail of facts deposed and sworn to by Nicolas Pedrosa, which memorial, with the documents attached to it, was forwarded to the Spanish court by special express from the Portuguese premier. By these letters it appeared that the high dignity of the person impeached by this statement of facts had not been sufficient to screen him from a very serious and complete investigation; in the course of which facts had been so clearly brought home to him by the confession of his several agents, and the testimony of the deceased Leonora's attendants, together with her own written declarations, whilst the poison was in operation, that though no public sentence had been executed upon the criminal, it was generally understood he was either no longer in existence, or in a situation never to be heard of any more, 'till roused by the awakening trump he shall be summoned to his tremendous last account. As for the unhappy widower it was fully signified to him from authority, that his return to Spain, whether on exchange or parole, would be no longer opposed, nor had he any thing to apprehend on the part of government, when he should there arrive. The same was signified in fewer words to the exculpated Pedrosa.

Whether Don Manuel de Casafonda will in time to come avail himself of these overtures time alone can prove; as for little Nicolas, whose prize-money has set him up in a comfortable little shop in Duke's-place, where he breathes the veins and cleanses the bowels of his Israelitish brethren in a land of freedom and toleration, his merry heart is at rest, save only when with fire in his eyes and vengeance on his tongue, he anathematizes the inquisition, and struts into the synagogue every sabbath with as bold a step and as erect a look, as if he was himself high priest of the temple, going to perform sacrifice on the re-assembling of the scattered tribes.

POLITICAL AUCTION.

DON ROTTEN BURGHO, conte representivo, has been induced, by the report of a speedy dissolution of parliament, to open a magnificent suite of rooms, in Parliament-street, where all gentlemen who mean to propose themselves as candidates for the representation of counties, cities, towns, or boroughs, in the ensuing parliament of the united kingdom of Great Britain and Ireland, may be accommodated with the following necessary articles to be disposed of in lots, and knocked down to the highest bidder :—

LOTS.

No. I.—A large quantity of promises and affectionate hugs and squeezes, embellished with a profusion of sweet smiles, tender looks, and gentle wishes. The promises are a little broken, and the smiles a little tarnished with the tears of the wearer. In other respects these articles are as good as new, and were lately the property of a lady of fashion, upon whom they were bestowed by a favourite gallant, a few months before she was divorced from her husband.

No. II.—A very fine set of constitutional and independent principles, of the purest quality, formerly in possession of certain sinecure placemen and pensioners, and though long in use, not a jot the worse for the wear.

No. III.—A new edition of Magna Charta, printed upon *foolscap*, for the benefit of simple electors.

No. IV.—An immense bundle of integrity, punctuality, honour, and honesty, contained in promissory notes and bills of exchange, passed several years ago by a set of anonymous money lenders, now in Botany Bay. These articles, which are as good as new, will be disposed of at 90 per cent. under prime cost.

No. V.—Several unredeemed pledges. These were formerly the property of certain lives and fortune's men, of high rank and character, and were originally considered of great value.

No. VI.—An immense assortment of cant, an article in high esteem and great demand among all pseudo patriots and politicians.

Sketch of the professional Life of Sir Thomas Masterman Hardy, Baronet, and a Captain in the Royal Navy.

THIS gentleman is a native of Dorsetshire, and at an early period entered into the navy. We are not apprized of any material

material incident that occurred to him during his service as a midshipman. He was raised to the rank of lieutenant in 1796, and, as though fortune had pre-destined to render him all the aid in her power, by placing him under the immediate eye of the greatest man whom England ever saw, by whom his own natural courage might be warmed by example, and those principles of naval education which he had already received matured to perfection under so unequalled a master, he was appointed to the Minerva frigate, the ship on board which the immortal Nelson immediately afterwards hoisted his broad pendant, as commander of a light detachment from the main fleet. From hence arose that intimacy which ended not but with the life of the friend, the preceptor, and the patron. Nothing could reflect greater honour on Captain Hardy than this unwearied attachment of his noble friend; and on the other hand, let us also be permitted to say, that the subsequent conduct of this gentleman reflects the greatest credit on the just discrimination and choice of character in friendship adopted by the immortal patron.

Scarcely had Mr. Hardy entered into his new appointment, when a distinguished opportunity of signalizing himself, immediately under the eye of his patron, fortunately presented itself; it were needless almost to say, Commodore Nelson suffered not the merit of his young friend to pass away unpromulged; the official account of this transaction is so extremely concise, that it would be perhaps more satisfactory to the public, to relate the fact in the words of the commodore himself, rather than marr a noble story by any inadequate or injudicious relation of our own concerning it.

"Last night, at 10 o'clock, I saw two Spanish frigates, and directed Captain Cockburne, in the Minerva, to attack the ship which carried a poop light; the Blanche bore down to attack the other. I have not yet received from Captain Preston an account of this action, but as I saw the Blanche this morning to the windward, with every sail set, I presume she had not suffered much damage. Captain Cockburne brought his ship to close action at twenty minutes before eleven, which continued without intermission 'till half past one, when La Sabina, of 40 guns, 28 eighteen-pounders on her main deck, and 286 men, Captain Don Jacoba Stuart, having lost her mizen mast, (as she had after the action), main, and fore masts, 164 men killed and wounded, struck her colours.

"You are, Sir, so thoroughly acquainted with the merits of Captain Cockburne, that it is needless for me to express them; but the discipline of the Minerva does the highest credit to her captains and lieutenants, and I wish fully to express the sense I entertain of their judgement and gallantry; Lieutenant Culverhouse, the first lieutenant, is an old officer of very distinguished

guished merit; Lieutenants Hardy, Gage, and Noble, deserve every praise which gallantry and zeal justly entitle them to, as do every officer and man in the ship. You will observe, Sir, I am sure with regret, amongst the wounded, Lieutenant James Noble, who quitted the Captain to serve with me, and whose merits and repeated wounds received in fighting the enemies of our country, entitle him to every reward which a grateful nation can bestow. The Minerva's opponent being commanded by a gallant officer, was well defended, which has caused her list of killed and wounded to be great, as also her masts sails, and rigging, to be much damaged.

"I have the honour to be,

(Signed) "HORATIO NELSON.

"*Sir John Jervis, admiral commander in chief, &c. &c. December* 20, 1796."

SECOND.

"In addition to my letter of this morning, I have to acquaint you that Lieutenants Culverhouse and Hardy, with a proper number of men, being put in charge of the Sabina, and she taken in tow at four A. M. a frigate was seen coming up, which, by her signals, was known to be Spanish; at half past four she came to action with the Minerva, who cast off the prize, and Lieutenant Culverhouse was directed to stand to the southward; after a trial of strength of more than half an hour, she wore and hauled off, or I am confident she would have shared the fate of her companion. At this time three other ships were seen standing for the Minerva; hope was alive, they were only frigates, and also that the Blanche was one of them; but when the day dawned, it was mortifying to see they were two Spanish ships of the line, and two frigates, and the Blanche far to the windward. In this situation, the enemy frequently within shot by bringing up the breeze, it required all the skill of Captain Cockburne, which he eminently displayed, to get off with a crippled ship; and here I must also do justice to Lieutenants Culverhouse and Hardy, and express my tribute of praise in their management of the prize; a frigate repeatedly fired into her without effect, and at last the Spanish admiral quitted the pursuit of the Minerva, for that of La Sabina, who was steering a different course, evidently with the intention of attracting the notice of the admiral, as English colours were hoisted over the Spanish. The Sabina's main and fore-mast fell over board before she surrendered. This is, Sir, an unpleasant tale; but the merits of every officer and man in the Minerva and her prize, were eminently conspicuous through the

whole of this arduous day. The enemy quitted pursuit of the Minerva, at dark.

(Signed) " HORATIO NELSON.

" *Admiral Sir John Jervis, commander in chief, &c. &c. 20th December*, 1790."

The gallantry displayed by Mr. Hardy, on the preceding occasion, appeared as the fore-runner of still greater enterprise; continuing in the Minerva, which remained on the Mediterranean or Cadiz station, and was principally employed as a cruizer, he met with a singular opportunity of distinguishing himself in the month of May following; his gallantry noticed, as it was by Captain Hallowell, who commanded the little detachment, was re-echoed in the loudest strains of approbation by the earl of St. Vincent, the commander in chief; his letter, together with that of Captain Hallowel, will serve as the best account of the transaction.

" SIR, " *June 16th*, 1797.

" I desire you will acquaint the lords commissioners of the admiralty, that Lieutenant Hardy, in the French republican corvette La Mutine, cut out of the bay of Santa Cruz, by the boats of his majesty's ships Lively and La Minerva, has this moment joined.

" The gallantry of this action, recited in the public and private letters of Captains Hallowell and Cockburne, has prompted me to take La Mutine into his majesty's service, and to appoint Lieutenant Hardy to the command of her. A measure so necessary to encourage a continuance of daring enterprise, I am confident wil merit the approbation of their lordships.

" *Lively, off S. W. end of Teneriffe,*
" SIR, *May 31st*, 1796.

" I have the honour to inform you, that on standing into the bay of Santa Cruz, in the island of Teneriffe, on the afternoon of the 28th, in company with La Minerva, I discovered an armed brig lying in the road, which, on our near approach, hoisted French colours. Captain Cockburne agreeing with myself in opinion, that she might be taken from her anchors, I ordered all the boats of the two ships, with a lieutenant in each, to bring her out. Lieutenant Hardy, of La Minerva, being the senior officer, the command fell on him. At about half past two in the afternoon, he made a most resolute attack, in which he was gallantly supported by Lieutenants Bland, Hopkins, and Bushby, and Lieutenant Bulkeley, of the marines, in the Lively's boat, and Lieutenants Gage and Maling, in La Minerva's boats, and, under a smart fire of musquetry from

from the brig, boarded and carried her almost immediately. This gave an alarm to the town, and a heavy fire of artillery and musquetry was opened from every part of the garrison, and from a large ship lying in the road, immediately, which continued without intermission for near an hour, during which time they were very much exposed in getting the brig under weigh, and towing her out, there being very little wind; and a little before four o'clock, they had got out of the reach of the batteries, with La Mutine French national corvette, of twelve 6-pounders, and two 36-pounder carronades, and one hundred and thirty-five men; one hundred and thirteen of whom were on board at the time, commanded by Citizen Xavier, premier capitain de Frigate. She sailed from Brest, on the 8th, for L'Isle de France, and had put into the bay of Santa Cruz, three days before she was captured, to take in water. The captain was on shore the time she was cut out.

"Lieutenant Hardy having commanded the boats on this expedition, I have sent him in with the prize, and cannot recommend him, or the officers and seamen employed with him, in too strong terms. Inclosed is a list of the wounded belonging to both ships.

"I have the honour to be, &c.

"BEN. HALLOWELL."

List of the Petty Officers and Seamen belonging to his Majesty's ship Lively, who were Wounded on the 29th May, in taking La Mutine French National Corvette, so as to render them incapable of doing their Duty for the present.

Mr. Ralph Scandish, master's mate.
William Allen, quarter master.
Peter Lawrence, Glenville Newberry, seamen.

Return of Officers and Men belonging to his Majesty's Ship Minerva, Wounded on the 29th May, 1797, taking the National Brig La Mutine.

Lieutenant Hardy.
Warrant Officer.—Mr. J. Coulson, gunner.
Petty Officers.—Mr. Eagar, midshipman. Mr. Carpenter, ditto, dangerously. Matthew Yessey, gunner's mate. Davis Lewis, second master's mate. Rebert Stoper, cockswain.
Seaman.—Anthony Hule, dangerously.
Soldiers of the 11th Regiment.—James Dunlap, corporal. John Milton, Samuel Clark, privates.

Total, eleven.

GEORGE COCKBURNE.

It is needless to say the measure and the recommendation were most warmly and expeditiously attended to by the admiralty board.

The Mutine was retained in his majesty's service, and Mr. Hardy continued her commander. In this station he became attached to the expedition sent to Egypt, under the orders of his former friend and patron, Sir Horatio Nelson, and was consequently present with him at the memorable encounter in the bay of Aboukir. His diligence and attention, qualities so peculiarly necessary and valuable in such a service, and in such a remarkably critical period of service, were in the highest degree conspicuous. The Mutine scoured the Mediterranean, and Mr. Hardy was indefatigable in his exertions to procure information from the Tiber to the Nile. Every port where information could be procured was carefully visited, and no means left untried to discover the tract which the French marauders had pursued; the result is known to all, and we cannot withhold a very considerable portion of praise from the person who assisted in guiding the efforts of our victorious squadron, any more than we can deny the merits of those who ultimately directed such efforts. In consequence of this action, our hero was promoted to the rank of post-captain, and appointed to the command of the Vanguard, of 74 guns, at that time the flagship of Sir Horatio Nelson: nor could any circumstances ever have reflected greater honour on him, than those which immediately accompanied this apppointment. In the most correct account that has ever yet appeared of the several circumstances which led to the action, as well as those which took place during the encounter itself, the following short notice is taken of this appointment. In speaking of the conduct of Sir Horatio Nelson, immediately after receiving that wound in his head which was at first considered mortal, it informs us, that supposing himself to be at the last extremity, he employed himself in delivering some confidential messages to his various friends, and more particularly one, which he wished to be conveyed to Lady Nelson, by the chaplain.

Nor did he forget what he esteemed his duty, but as the last beneficial office he should be able to perform, he appointed Captain Hardy of the Mutine, to be captain of the Vanguard. The destruction of all power of material offence on the part of France, ceasing, with the victory just mentioned, no further opportunity was offered to Captain Hardy of adding to that reputation which he had already so deservedly acquired; he continued captain of the Vanguard, but having returned to England with that ship in the year 1799, in consequence as well of Lord Nelson having shifted his flag on board the Foudroyant, as of the former needing material repairs, Captain Hardy struck his pendant, and continued out of commission 'till the return of his noble patron to England, in the month of November, 1800. The arrival of his lordship was as it may be well remembered,

the immediate fore-runner of his appointment to a naval command; the St. Joseph, a first rate, one of the two ships captured by himself, off Cape St. Vincent's, was ordered to be fitted for the purpose of receiving his flag, and with the utmost promptitude he again selected Mr. Hardy, as a well tried and ever valued friend, to be his captain.

As the St. Joseph was not in sufficient forward state of equipment to receive his lordship, Captain Hardy, *ad interim*, hoisted his pendant on board the Namur, of 98 guns, from which ship he removed early in the ensuing month into the St. Joseph. The northern confederacy, and the apprehension of a rupture with Russia, Sweden, and Denmark, as well as the other states and kingdoms in that quarter, rendered it necessary, almost immediately afterwards, that the command before conferred on his lordship, and the direction of his services, should be changed, he was in consequence appointed second in command of the formidable armament, ordered to be equipped for the Baltic, under the orders of Admiral Sir Hyde Parker. The St. Joseph being too heavy a ship for such a species of service, his lordship immediately removed his flag into the St. George, of 98 guns, selecting, for the third time, Mr. Hardy for his captain. He accompanied him to the Baltic, and on his lordship's return, after the fortunate termination of that expedition, he repaired to London also. When the expedition was projected against Boulogne in the mouth of August following, Captain Hardy was appointed to command the Isis, of 50 guns, one of the ships employed on that occasion. The cessation of hostilities which presently afterwards succeeded, occasioned a short cessation in the naval service of Captain Hardy.

At the commencement of the present war, he commanded the Amphion, of 32 guns, but in the month of March, 1803, was promoted from that ship, to the Culloden, of 74 guns. This command was, however, temporary, and he only received it in consequence of the indisposition of Captain Otway, who commanded that ship. On that gentleman's recovery, Captain Hardy returned to the Amphion, and repaired to the Mediterranean as an attendant on the fleet, sent thither under the orders of the ever to be revered Lord Viscount Nelson. In this command he continued 'till an opportunity offered to his lordship of selecting him, for the fourth time, his captain; the remainder of the detail is too melancholy, too glorious, and too recent to require any farther relation from us. We shall content ourselves with simply pointing out, that Captain Hardy stands as a solitary instance of acting singly as captain to an admiral commanding so extensive a fleet. It has always been customary, and for a series of years uniformly practised, that admirals commanding twenty ships of the line, should be allowed two captains, the first of whom is called the captain of

the

the fleet, and bears the rank of a flag-officer. Notwithstanding the unequalled importance of this command, and the immoderate pressure it must necessarily cause on the mind of the admiral in chief, his lordship, the gallant officer who was to have acted as the first captain being indisposed, when the Victory for the last time quitted Spithead, did not hesitate putting to sea, having no other officer of that rank under him but Captain Hardy, as though confident his abilities and his exertions were equal to meet every exigency of the service.

Captain Hardy was the only officer bearing that rank on board the Victory, at the time of the battle off Trafalgar. This circumstance renders all eulogium and comment unnecessary.

His services have not been passed over, neglected, or unrewarded. In the gazette of the 29th of January last, being that in which it was notified, that the earl of Northesk and Sir Richard Strachan were created knights of the bath, it was also announced that his majesty had been pleased to confer the dignity of a baronet of the united kingdoms on Captain Hardy. In the month of March, he was appointed to the Sampson, of 64 guns.

PARISIAN FASHIONS.

WE have not yet perceived in the head-dress, nor any part of the costume, any symptom of the decline of the fine season. White and straw still prevail, as in the summer. Straw hats, with a high crown, like those worn by the men, besides the band and a bunch of ribbon in front, have also a riband, which is fastened to the leaf, on each side near the ear, and is knotted above. Although the rose is still in fashion, green and deep yellow are much in use. The fashionable wreath is composed of a laurel leaf, and diamonds, on one side, and a branch of olive, gold and pearls, upon the other. Ladies, who have neither diamonds nor pearls, may procure a wreath and a comb in imitation of them, which are less expensive, and appear to the eye not less brilliant.

CURIOUS PROCLAMATION.

THE following proclamation was lately issued in a Scotch borough to the north of Tay :—

Oh yez! Oh yez! Oh yez! There is a cow to be killed at Flesher Gillies' on Friday next, gin there sall be encouragement for the same. The provost is to tak a hale leg; the minister is to tak anither leg for sartin; the domini and gauger a leg between them. Sin there is only anither leg on hond, gin there sall be ony certainty of taking this odd leg, the cow sall be killed withouten fail, for the Flesher himsel is to tak his chance of selling the head and harraghes.

LUDICROUS INCIDENT.

THE following ludicrous incident occurred lately, at a lecture on optics, in a small town in Kent. The lecturer began, "Ladies and gentlemen, I have the honour, for the first time, in this county of Kent, to deliver a lecture on optics"—He was here interrupted by a bulky hop merchant, who sat opposite him, with, "Sir, before you proceed further, I ax leave, with all due difference, to inform you that, in this country, we do not call them *hop-stick*, but *hop-poles*."

CURIOUS CROMLECH.

SOME time since, a large oblong British or Danish barrow was opened in the parish of Duntesbourne-Abbots, Gloucestershire; in which was found a kistraen, or cromlech, containing about eight or nine bodies, of different ages, many of the bones of which, and the teeth, were entire. The whole length of the barrow, diagonally, was about 50 yards; straight over the stones about 40; the width about 30 yards; and the distance between the two stones, 24 feet; The barrow was composed of loose quarry-stones, laid in strata near the great stones, and brought from a distance.

The largest stone, which has been long known in the country by the name of the hore-stone, is of the kind of grey-withers, or Stonehenge: it is flat on the east side, and round on the side which is in the barrow; is 12 feet high from the base, and 15 in circumference. The other stone lies almost flat on the ground, and is about three yards square, and one foot thick. This covers the kistraen which contains the bones, and which is divided into two cells, about four feet square each, and six deep. There is little doubt of its being British; and it may be called the early altar, or family monument.

There are several other barrows in the neighbourhood; and it is singular that the farm adjoining is called Tack Barrows, probably a corruption or abbreviation of some other name. The bones are reburied; but the barrow, and the tomb, are left open for the inspection of the curious.

A QUESTION, *by Captain P. Ninnis, of Tavistock.*

REQUIRED the easiest and best method possible to find the quantity of water (ale measure) an engine will heave to a stroke, supposing the length of the stroke to be 8 feet, and the diameter of the box 15 inches.

Answer, by J. S. of Exeter, to T. Jervis's Rebus, inserted September 2.

YOUR initials, Sir, when right combin'd,
A ROSE is quickly brought to mind.

‡‡ We have received the like answer from J. Woodman, jun. of North Curry; W Cross, of Bristol; R. Gidley, and P. Codd, of Dean Prior; Sophia, of Modbury; John Salter, of Broadhembury; W. D. Champion, of Bridgewater; J. Fairweather, of Batson; B. Belcher, of East Stonehouse; and J. Matthews, of Dartmouth.

Answer, by W. Harrison, of Tiverton, to J. Woodman's Charade, inserted Sept. 2.

BULLION's a metal many crave;
But all its worth could never save
A dying miser from the grave.

†† We have received the like answer from Henry Stoneman, J. T. Symons, J. S. and S. T. Wreford, of Exeter; W. D Champion, of Bridgewater; W. D. of Bristol; ; John Salter, of Broadhembury; Sophia, of Modbury; J. Ryan, of East-Stonehouse; Rusticus, of Awliscombe; W. Varcoe, of Mevagissey; J. Tucker, Tiverton; J. Fairweather, near Batson; T. Pitman, of Child Okeford; and J. A. Dyer, of Taunton.

A CHARADE, *by J. Lewis, of Poole.*

WHAT many will do when angry and vex'd
Transpose, and my first you will view;
Then if you're inclin'd to find out my next,
'Tis a liquid, and so, Sirs, adieu!
My whole is a plant which you will define,
If you all the parts but rightly combine.

A CHARADE, *by T. Rutger, of Clowance.*

TO bribe, ye gents. what's often given,
My first it will expound;
My second doubtless you'll descry,
It's in the ocean found.

Thou sweet sensation! pleasing whole;
E'er let me thee enjoy;
To ease the weight of other's woe,
Oft let my mind employ.

A REBUS, *by W. D. of Bristol.*

ACHILLES' friend, who fell by Hector's spear;
A warrior great, who made Troy's sons to fear;
A rural deity, ye bards, then find;
The son of Niobe next bring to mind;
An ancient king, whom Gallia's sons deplore;
An English prince once fam'd, but now no more;
A Grecian king who sought the Stygian shore,
From Flora's train select a handsome flower,
And last, a passion that doth the mind devour.
The initials join'd will make appear,
What swift descendeth thro' the air,

POETRY.

For the WEEKLY ENTERTAINER.

The SKY-LARK's DEATH.

By WILLIAM MANN.

THE roseate morn, with golden rays,
Had ting'd the lofty grove;
The warblers from the blooming sprays
Pour'd forth their songs of love;
No gloomy cloud obscur'd the sky,
But all was poor and bright,
When forth I rambled to enjoy
This prospect of delight.

Thro' fields adorn'd with flow'ry pride
I bent my joyous way,
While the extended landscape wide
Did all its charms display;
Transcendant beauty cloath'd the plains,
The hills with splendour glow'd;
The rivers, rills, and purling streams,
In tuneful cadence flow'd.

While I ador'd these beauteous scenes,
With an enthusiast flame,
A skylark's sweet, harmonious strains
My rapt attention claim'd;
On wings of ecstacy upborne
He pour'd the dulcet note,
And hail'd the bright, effulgent morn
With his harmonious throat.

I listen'd while his music sweet
With rapture fill'd my breast;
When lo! descending swift to greet
The partner of his nest,
A hawk, Oh! dreadful to relate,
From some dire covert flew,
Arm'd with the vengeful shafts of fate
Did swift his prey pursue.

Alarm'd with horror and despair,
In shrieks the lark implor'd
Compassion for his youngling care
From the fell tyrant bird:
But vain his plaint! the cruel foe
Compassion's boon denied,
And grasping him with iron claw,
He shudder'd, shriek'd, and died.

Oh! while the muse, in pensive strains,
Thy fate, sweet skylark! mourn,
Each av'nue of my youthful breast
With indignation burns;
My thundering tube, with wrathful ire,
Shall long revenge thy death;

And

And many a hawk shall be requir'd
To yield his gasping breath.

Ashburton, August, 1806.

For the WEEKLY ENTERTAINER.

SONG.

WHEN shall I taste that bliss again,
That made me once the happiest swain?
When, with my love, at fall of day,
Along the smiling meadows stray?

Alas! such joys I must forego!
Such joys I dare no longer know!
Must—in my early days resign,
Nor longer call the charmer mine.

O destiny! Oh! cruel pow'r!
Oh! tell me, in what fatal hour,
Did I thy rigid bosom move,
To tear me from the maid I love?

Goddess of love! Oh! Venus! rise,
And cheer again these longing eyes!
Dispel the shades that round me close,
And put a period to my woes.

Trent. B. AYRES

The TOMB *of my* FATHERS.

SUBDU'D by misfortune, and bow'd down with pain,
I sought on the bosom of peace to recline:
I hied to the home of my fathers again,
But the home of my fathers no longer was mine.

The look that spoke gladness, and welcome was gone;
The blaze that shone bright in the hall was no more:
A stranger was there, with a bosom of stone,
And cold was his eye, as I enter'd his door.

'Twas his, deaf to pity, to tenderness dead,
The falling to crush, and the humble to spurn;
But I staid not his scorn, from his mansion I fled,
And my beating heart vow'd never more to return.

What home shall receive me? One home yet I know;
O'er its gloomy recess see the pine branches wave:
'Tis the tomb of my fathers! the world is my foe,
And all my inheritance now is a grave;

'Tis the tomb of my fathers! the gay moisten'd walls,
Declining to earth, speak aloud to decay;
The gate off its hinge, and half opening, calls,
"Approach, most unhappy! thy dwelling of clay."

Alas! thou sole dwelling of all I held dear,
How little this meeting once augur'd my breast!
From a wanderer accept, Oh! my fathers, this tear—
Receive him, the last of his race, to your rest.